

Commission will dismiss or deny the petition by issuing a concise statement of the reason(s) for dismissing or denying the petition, disposing of all substantive issues raised in the petition.

[63 FR 68931, Dec. 14, 1998, as amended at 64 FR 53240, Oct. 1, 1999; 70 FR 61058, Oct. 20, 2005; 71 FR 15619, Mar. 29, 2006]

§ 1.945 License grants.

(a) *License grants—auctionable license applications.* Procedures for grant of licenses that are subject to competitive bidding under section 309(j) of the Communications Act are set forth in §§ 1.2108 and 1.2109 of this part.

(b) *License grants—non-auctionable license applications.* No application that is not subject to competitive bidding under § 309(j) of the Communications Act will be granted by the Commission prior to the 31st day following the issuance of a Public Notice of the acceptance for filing of such application or of any substantial amendment thereof, unless the application is not subject to § 309(b) of the Communications Act.

(c) *Grant without hearing.* In the case of both auctionable license applications and non-mutually exclusive non-auctionable license applications, the Commission will grant the application without a hearing if it is proper upon its face and if the Commission finds from an examination of such application and supporting data, any pleading filed, or other matters which it may officially notice, that:

(1) There are no substantial and material questions of fact;

(2) The applicant is legally, technically, financially, and otherwise qualified;

(3) A grant of the application would not involve modification, revocation, or non-renewal of any other existing license;

(4) A grant of the application would not preclude the grant of any mutually exclusive application; and

(5) A grant of the application would serve the public interest, convenience, and necessity.

(d) *Grant of petitioned applications.* The FCC may grant, without a formal hearing, an application against which petition(s) to deny have been filed. If any petition(s) to deny are pending (i.e.

have not been dismissed or withdrawn by the petitioner) when an application is granted, the FCC will deny the petition(s) and issue a concise statement of the reason(s) for the denial, disposing of all substantive issues raised in the petitions.

(e) *Partial and conditional grants.* The FCC may grant applications in part, and/or subject to conditions other than those normally applied to authorizations of the same type. When the FCC does this, it will inform the applicant of the reasons therefor. Such partial or conditional grants are final unless the FCC revises its action in response to a petition for reconsideration. Such petitions for reconsideration must be filed by the applicant within thirty days after the date of the letter or order stating the reasons for the partial or conditional grant, and must reject the partial or conditional grant and return the instrument of authorization.

(f) *Designation for hearing.* If the Commission is unable to make the findings prescribed in subparagraph (c), it will formally designate the application for hearing on the grounds or reasons then obtaining and will notify the applicant and all other known parties in interest of such action.

(1) Orders designating applications for hearing will specify with particularity the matters in issue.

(2) Parties in interest, if any, who are not notified by the Commission of its action in designating a particular application for hearing may acquire the status of a party to the proceeding by filing a petition for intervention showing the basis of their interest not more than 30 days after publication in the FEDERAL REGISTER of the hearing issues or any substantial amendment thereto.

(3) The applicant and all other parties in interest shall be permitted to participate in any hearing subsequently held upon such applications. Hearings may be conducted by the Commission or by the Chief of the Wireless Telecommunications Bureau, or, in the case of a question which requires oral testimony for its resolution, an Administrative Law Judge. The burden of proceeding with the introduction of evidence and burden of

proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission or the Chief of the Wireless Telecommunications Bureau.

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§ 1.946 Construction and coverage requirements.

(a) *Construction and commencement of service requirements.* For each of the Wireless Radio Services, requirements for construction and commencement of service or commencement of operations are set forth in the rule part governing the specific service. For purposes of this section, the period between the date of grant of an authorization and the date of required commencement of service or operations is referred to as the construction period.

(b) *Coverage and substantial service requirements.* In certain Wireless Radio Services, licensees must comply with geographic coverage requirements or substantial service requirements within a specified time period. These requirements are set forth in the rule part governing each specific service. For purposes of this section, the period between the date of grant of an authorization and the date that a particular degree of coverage or substantial service is required is referred to as the coverage period.

(c) *Termination of authorizations.* If a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires.

(d) *Licensee notification of compliance.* A licensee who commences service or operations within the construction period or meets its coverage or substantial service obligations within the coverage period must notify the Commission by filing FCC Form 601. The notification must be filed with the Commission within 15 days of the expiration of the applicable construction or coverage period. Where the authorization is site-specific, if service or operations have

begun using some, but not all, of the authorized transmitters, the notification must show to which specific transmitters it applies. This notification requirement is not applicable to authorizations subject to post-license registration requirements under the Dedicated Short-Range Communication Service (DSRCS), subpart M of part 90 of this chapter.

(e) *Requests for extension of time.* Licensees may request to extend a construction period or coverage period by filing FCC Form 601. The request must be filed before the expiration of the construction or coverage period.

(1) An extension request may be granted if the licensee shows that failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control.

(2) Extension requests will not be granted for failure to meet a construction or coverage deadline due to delays caused by a failure to obtain financing, to obtain an antenna site, or to order equipment in a timely manner. If the licensee orders equipment within 90 days of its initial license grant, a presumption of diligence is established.

(3) Extension requests will not be granted for failure to meet a construction or coverage deadline because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization. The Commission will not grant extension requests solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct.

(4) The filing of an extension request does not automatically extend the construction or coverage period unless the request is based on involuntary loss of site or other circumstances beyond the licensee's control, in which case the construction period is automatically extended pending disposition of the extension request.

(5) A request for extension of time to construct a particular transmitter or other facility does not extend the construction period for other transmitters and facilities under the same authorization.

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